

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

ENERGIZER HOLDINGS, INC., EVEREADY BATTERY CO., INC., Plaintiffs, v. SPECTRUM BRANDS, INC. a Wisconsin Corporation, Defendant.	Case No. to be assigned JURY TRIAL DEMANDED
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COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Energizer Holdings, Inc. and Eveready Battery Co., Inc. (collectively “Energizer”) alleges against Defendant Spectrum Brands, Inc. (“Spectrum”) as follows:

JURISDICTION

1. This action arises under the Patent Laws of the United States, 35 U.S.C. §§ 1 et seq. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and § 1338(a).

VENUE

2. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c), and 28 U.S.C. § 1400(b) because Spectrum is incorporated in this judicial district, and is subject to personal jurisdiction here.

THE PARTIES

3. Plaintiff Energizer Holdings, Inc. is a Missouri corporation. Energizer Holdings, Inc. maintains corporate offices at 533 Maryville University Drive, St.

Louis, Missouri 63141. Plaintiff Eveready Battery Company, Inc. is a Delaware corporation. Eveready Battery Company, Inc. maintains corporate offices at 533 Maryville University Drive, St. Louis, Missouri 63141. Energizer is in the business of making, offering for sale, selling and supporting a variety of primary batteries, including but not limited to the Energizer® e²® Lithium® performance brand.

4. On information and belief, Defendant Spectrum Brands, Inc. is a corporation organized and existing under the laws of the State of Wisconsin, with its principal place of business at Six Concourse Parkway, Suite 3300, Atlanta, Georgia 30328. Spectrum maintains its North American Headquarters Global Operations and Technology at 601 Rayovac Drive, Madison, Wisconsin 53774. Spectrum maintains manufacturing facilities at 2851 Portage Road, Portage, Wisconsin 53901, and 100 Rayovac Court, Fennimore, Wisconsin 53809.

5. Spectrum is in the business of making, offering for sale, selling and supporting a variety of primary batteries, including but not limited to lithium batteries under the brand name RAYOVAC, in the United States, and, more particularly, in the Western District of Wisconsin.

COUNT I

(Infringement of U.S. Patent No. 5,290,414)

6. On March 1, 1994, the United States Patent and Trademark Office duly and legally issued United States Patent No. 5,290,414 (the '414 Patent), for an invention entitled "Separator/Electrolyte Combination For A Nonaqueous Cell." (A copy of the '414 patent is attached herewith as Exhibit A.) Energizer is the owner of the '414 Patent. Energizer has complied with the requirement of 35. U.S.C. §287(a)

by placing a notice of the '414 Patent on all packages of batteries that embody the invention.

7. On information and belief, Spectrum has been and still is infringing, contributing to the infringement of, and/or inducing the infringement of the '414 Patent by making, selling, using, offering for sale, and/or importing into the United States RAYOVAC lithium batteries embodying the patented invention and will continue to do so unless enjoined by this Court.

8. To the extent that Spectrum has continued and does continue its infringing activities after receiving notice of the '414 Patent, such infringement is willful, entitling Energizer to the recovery of treble damages pursuant to 35 U.S.C. §284. In addition, this is an “exceptional case” justifying an award of attorneys’ fees and costs to Energizer pursuant to 35 U.S.C. §285.

9. Energizer has been damaged by Spectrum’s infringement, which will continue unless enjoined by this Court.

COUNT II

(Infringement of U.S. Patent No. 6,849,360)

10. On February 1, 2005, the United States Patent and Trademark Office duly and legally issued United States Patent No. 6,849,360 (the '360 Patent), for an invention entitled “Nonaqueous Electrochemical Cell With Improved Energy Density.” (A copy of the '360 patent is attached herewith as Exhibit B.) Energizer is the owner of the '360 Patent. Energizer has complied with the requirement of 35 U.S.C. §287(a) by placing a notice of the '360 Patent on all packages of batteries that embody the invention.

11. On information and belief, Spectrum has been and still is infringing, contributing to the infringement of, and/or inducing the infringement of the '360 Patent by making, selling, using, offering for sale, and/or importing into the United States RAYOVAC lithium batteries embodying the patented invention and will continue to do so unless enjoined by this Court.

12. To the extent that Spectrum has continued and does continue its infringing activities after receiving notice of the '360 Patent, such infringement is willful, entitling Energizer to the recovery of treble damages pursuant to 35 U.S.C. §284. In addition, this is an "exceptional case" justifying an award of attorneys' fees and costs to Energizer pursuant to 35 U.S.C. §285.

13. Energizer has been damaged by Spectrum's infringement, which will continue unless enjoined by this Court.

WHEREFORE, Energizer prays for judgment and relief as follows:

A. A preliminary and permanent injunction against Defendant's continued infringement, inducing of infringement, and contributing to infringement of the '414 and/or '360 patents (collectively the "patents-in-suit");

B. An award of damages in favor of Energizer and against Defendant sufficient to compensate Energizer for Defendant's infringement of the patents-in-suit, and an assessment of prejudgment interest and post-judgment interest;

C. Trebling of damages for willful infringement pursuant to 35 U.S.C. §284;

- D. A finding by the Court that this case is exceptional under 35 U.S.C. §285;
- E. An award to Energizer of its reasonable expenses, including attorneys' fees, and costs of this action; and
- F. Such other and further relief as the Court finds just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rules of Civil Procedure Rule 38, Plaintiff Energizer hereby demands a trial by jury on all issues so triable.

Dated: July 25, 2008

Respectfully submitted:

s/Harold A. Laufer

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